

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EDWARD GENE OCHOA	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-273
WARDEN, FCI BEAUMONT	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner, Edward Gene Ochoa, a federal prisoner formerly confined at FCI Beaumont, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition for writ of habeas corpus be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).


After a careful review, this court finds the objections lacking in merit. As outlined by the Magistrate Judge, the Supreme Court has not expressly held that *Mathis* applies retroactively to cases on collateral review. *Mathis v. United States*, 136 S.Ct. 2243 (2016). Furthermore, petitioner challenges a sentencing enhancement. Thus, petitioner’s challenge does not suggest that he was convicted of a nonexistent offense. *See In re Bradford v. Tamez*, 660 F.3d 226, 230 (5th Cir. 2011) (“a claim of actual innocence of a career offender enhancement is not a claim of actual innocence of the crime of conviction and, thus, is not the type of claim that warrants review under § 2241); *Padilla v. United States*, 16 F.3d 424, 427 (5th Cir. 2005); *Kinder v. Purdy*, 222 F.3d

209, 213-14 (5th Cir. 2000). This Court is bound by Fifth Circuit Court precedent and petitioner's objections lack merit.

ORDER

Accordingly, the petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

SIGNED this the **26** day of **October, 2018**.


Thad Heartfield
United States District Judge